



## POLICE DEPARTMENT

July 17, 2009

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Theresa Sberna  
Tax Registry No. 931169  
33 Precinct  
Disciplinary Case No. 83257/07  
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The above-named member of the Department appeared before me on March 24, 2009, May 01, 2009 and May 04, 2009, charged with the following:

1. Said Police Officer Theresa Sberna, while assigned to the 33 Precinct, while on-duty, on or about August 9, 2006, did wrongfully impede a Department investigation, to wit: said Officer, by making misleading statements at a PG-206-13 hearing, attempted to prevent the Department from coming to a conclusion as to what transpired at the scene of a car accident on March 16, 2005. *(As Amended)*

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED  
CONDUCT, GENERAL REGULATIONS

2. Said Police Officer Theresa Sberna, while assigned to the 33 Precinct, while on-duty, on or about March 16, 2005, did wrongfully engage in conduct prejudicial to the Good Order, Efficiency or Discipline of the Department in that said Police Officer, at a location known to this Department, in New York County, knowing that a written instrument contained a false statement or false information, offered or presented it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office or public servant, to wit: said Officer, while acting in concert with another individual, identity known to the Department, listed Jada Caballero as the driver on an accident report form, knowing that to be false.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED  
CONDUCT, GENERAL REGULATIONS

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Chrysler Sebring<sup>2</sup> struck her. The driver of the Sebring was a man in his 30's, approximately 5'1" to 5'2". This man did not have any feminine characteristics and could not have been mistaken for a woman. While her car was damaged, Packer did not sustain any injuries.

Upon being struck by the other vehicle, Packer got out of her car and looked at her rear bumper. She said it was "busted and besides on the passenger side on the back was denting." She told the other motorist that he had struck her and he indicated that it could be fixed. Packer agreed but insisted that it be "fixed by a professional." The other driver disagreed saying that the damage was "only a little dent." Packer then called the police because she was "tired of getting hit and nobody paid for it." She explained that she was once struck by a car on Bruckner Boulevard by a motorist who vowed to see that her car would be repaired, a promise that individual never adhered to.

In requesting the police, Packer telephoned 311 as opposed to 911. When she told the other driver that she was calling the police, he said, "Call the policeman, but this is a policeman car I'm driving." When no one responded to her call, Packer called 311 a second time. Still, no response was forthcoming and 911 was contacted. Packer said that while waiting for the police to arrive, several police vehicles passed. Before calling 911, she flagged down a regular police car. The occupants told her "somebody will be along later to help." The two occupants in that car never got out and Packer said that their reaction was "[l]ike I'm crazy. Like I am trying, you know, to make up something, you know." Shortly thereafter, a police sport utility vehicle ("SUV") came by. Packer waved them down and they too informed her that someone would be by to help. She believed

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<sup>2</sup> As both this car and Packer's car are Chrysler products this car will hereinafter be referred to as the "Sebring" to avoid confusion.

that three occupants were in the SUV. Eventually “two lady officers” arrived at the scene, one of whom Packer identified as being the Respondent. She also noted that a woman driving a red Mitsubishi also arrived at the scene, about ten minutes or so after the police, went across the street to the police car and spoke to the officers. Packer did not believe the woman with the Mitsubishi arrived more than ten minutes after the police. The man who struck Packer was still present and was seated in the Sebring.

Packer testified that eventually, “the little slim lady” police officer approached her. The other officer who was driving the patrol car was “a little bit on the heavy side.” When asked if she observed the officer who approached her to be present in the courtroom, Packer asked that the Respondent stand up. When the Respondent stood up, Packer said “Yeah, that’s the height of the person.” In response to the Court’s inquiry, Packer affirmed that the Respondent was the officer who came over to her but noted, “Yeah. Like I said, people features change in five years.” Asked to further clarify her response, she said, “[t]hey look alike.” Before taking the stand, Packer agreed that she saw many police officers in the hallway. She denied telling the Assistant Department Advocate “about anything” in the hall aside from him asking her to be patient.

When approached by the officer, Packer said that she was asked for her license, registration and proof of insurance. The officer took those items, was dismissive and returned to the patrol car. Specifically, Packer claimed that she attempted to tell the officer that she was rear-ended while waiting for a parking spot, but the officer “put her hand up” in a stop motion. The Court asked Packer if she saw the officer who approached her the day of the accident waiting outside the courtroom. Packer indicated in the affirmative, noting that she was sitting in the hallway, and described her as “very

thin, blonde, and medium, medium height.” After the officer went back to the patrol car, she saw her converse with the other officer in the car. Packer waited by her car and was approached again by the officer who returned her documents to her along with “a little slip of paper to go to the 33 Precinct and get the accident report.”

Thereafter, Packer parked her car and went home. She went to the 33<sup>rd</sup> Precinct a few days later in order to get a copy of the report. She claimed that she was told that nothing was on file pertaining to the accident. Packer went to the precinct a second time and still, there was no report on file. She identified DX 1 as an accident report which she eventually obtained. She said that she enlisted the help of a friend who works at Police Headquarters to locate the report. In turn, he was able to locate the report. In reviewing this report, Packer claimed that she “was shocked because it wasn’t a lady driving the car that hit me.” The report listed “Jada Caballero” as the driver which struck her. She was also “shocked” because the report listed the accident as occurring on St. Nicholas Avenue, which was incorrect. In light of the inaccuracy on the report, Packer notified the Department. She was certain that a man hit her and not a woman.

Aside from the “two lady police officers” who responded and stopped at the accident scene, Packer said that no other officers stopped and got out of their car. She denied there was a crowd at the accident scene and said the only people who were present was Shirley Miller and Verna Demary. The woman who arrived in the red Mitsubishi departed first, followed by the man in the grey car who struck her. She reiterated that “everybody left” together, including the two female officers.

On cross-examination, Packer was shown a presentation board containing six pictures, numbered one to six, as RX A. They comprise photographs of the north,

south and west corners of 157 Street and Amsterdam Avenue. She identified photograph four as the Holiness Church, photograph two as a side view of the same area of four, photograph three as the Thurgood Marshall senior apartment building, and six as a park past the Thurgood Marshall building.

Packer was asked to indicate with a red pen mark on the exhibit where she was struck. She marked picture one accordingly, on the corner, and did the same for picture number two utilizing a circle. She agreed that there was a fire hydrant on the left-hand side of the corner of picture one.

Packer denied that she was double parked, and said she was parked "parallel behind another car." She explained that there was one car ahead of her and that she was in the parking lane on 157 Street. She contended that her car was fully out of the way of traffic but she agreed that she was not legally parked and was positioned at the fire hydrant on the corner. Packer was waiting for another motorist to leave his parking spot across the street. In picture five, Packer demonstrated where she waited for the police to respond to the scene, and acknowledged that she moved her car because she was afraid that a second collision might occur. She notated this picture accordingly.

Packer testified that she has lived in the area of West 157 Street between Amsterdam Avenue and Broadway since 1998. The area has remained the same from that time to today, in allowing traffic to travel in one direction going from east to west. Both sides of the street contain a parking lane and Packer did not believe that two cars can travel down West 157 Street side by side. Upon positioning her car in the spot that she previously testified to, Packer said that she intended to park in a specific spot on the right side of the street. She agreed that at the time her car was fairly new. Packer could

not recall if her engine was on as she waited for the other motorist to vacate the parking spot, and a document was unable to refresh her recollection.

On March 30, 2005, Packer recalled that she decided to write a complaint letter to the Department about the handling of the accident, with the assistance of her daughter, Tanya. She did not recall if she dictated a story for Tanya to type and said that she speaks to her many times a day. When shown a letter dated March 30, Packer did not recall if she sent it.

Prior to the accident happening, Packer recalled speaking to a friend, Shirley Miller, who was on the sidewalk. She indicated that she provided the police with names of witnesses to the accident, Miller and Patterson. Packer testified that when she saw the car leave the parking space that she wanted, she was simultaneously struck.

Packer testified that photograph three on RX A was 157 Street and Amsterdam Avenue. She was unsure if the streets go from west to east at that location. Using this photograph, Packer demonstrated where the car was pulling out from the spot that she desired to park in. After being struck from behind, Packer indicated that the driver who hit her backed up and "pulled further down the block." She went down the block as well. Asked if she was concerned the driver was trying to flee the scene, Packer said, "You can never tell." After pulling down the block, she got out of her car and began a conversation with the driver who hit her near a "Spanish whatever Seven Day Adventist Church." When shown RX B, comprising pictures seven through 12, Packer identified picture seven as the church. The conversation occurred on the sidewalk. A senior building is across the street from this location.

Ultimately, two female police officers responded to Packer's call for help. She said that they parked their police car in the driveway of the senior building, but did not park fully in the driveway. She was on the sidewalk upon their arrival. Packer explained that the patrol car was parked "in enough to get the tail out of the street." She testified that an officer approached her to get her information and took it back across the street to the police car. Packer affirmed that she remembered a female police officer approach her, and believed this occurred after the red Mitsubishi arrived on the scene. While she admitted that she was "not exactly sure," she then said she believed the Mitsubishi "pulled up" before the police officers. She was "quite sure" that the officer was the Respondent and reiterated that she put her hand up when Packer began to explain how the accident happened. All of the aforementioned occurred on the sidewalk.

After the accident happened, Packer was speaking to a friend, Verna Demary. The man who hit her was also standing on the sidewalk and was never near the police car. When asked if she was certain that the man did not go near the police car, Packer said, "If he did, I didn't see him."

When questioned about the prior police cars that passed the accident scene, Packer reiterated that one was a sport utility vehicle and another was a "regular police cruiser." She denied that the sport utility vehicle was possibly a van and said that she has a familiarity with cars. While she saw three occupants in the sport utility vehicle, she said there could have been more. Packer testified that this car never stopped on West 157 Street and they continued "down to Broadway" after telling her "somebody will be along later." She is "a hundred percent sure" that she saw no other police vehicle at the scene.

Regarding the red Mitsubishi, Packer said it parked "down from the police car," about a half a length away from it and was not far away. At this point, Packer asked if her testimony was "going to lead to the \$400 for my bumper?" and indicated that she never received the money for her damaged bumper. She admitted that she assumed she would receive the \$400 owed to her by offering her testimony but noted that this was an assumption and no one led her to believe this.

Packer never asked the male who struck her vehicle for his paperwork. She affirmed that it took over an hour for the police to arrive and she never suggested that she and the other driver exchange information because he was combative and argumentative. Despite the fact that she attempted to treat the other driver with respect, Packer said he was yelling and "talking to me so badly." Packer indicated that she never spoke to the driver of the red Mitsubishi and the closest she was to that person was 15 to 20 feet.

Packer did not recall what day of the week the accident occurred on aside from the fact that it was on March 16. The area where it happened is not generally busy with traffic on weekdays.

Packer admitted that she knows a Detective Byron Chavres. She knows him "through other people" and he assisted her in obtaining the accident report. She did not remember if Chavres told her to contact the Internal Affairs Bureau about how the accident was handled. Packer did not recall if she saw the female driver of the red car speak to the man who hit her car.

On redirect examination, Packer testified that she never told the responding officers that a female driver struck her car. She said the driver "was a man" and knew he was because she had an argument with him on the sidewalk.



Police Officer Jada Caballero

Caballero testified that she has been with the Department for 18 years having worked at first in Transit District 4, the Deputy Chief of Department and then in the Legal Bureau. After the merger, she worked for the Chief of Department's Domestic Violence Unit for about nine years then Counter Terrorism for about four years then her current assignment, Viper 2.

On March 16, 2005, she was involved in a romantic relationship with a man she knew as Eric Castellanos. She was not sure of his actual legal name which may have been Lazaros but he was also known as Eric Storm.

She had met him on-line and had been dating him for six or seven months. She broke up with him in April 2005 and last spoke to him in June or July of that year.

At the time of the incident she owned "two or three" automobiles. One was a 2004 Chrysler Sebring, a red Mitsubishi Eclipse and a silver Mitsubishi Eclipse. Castellanos drove these automobiles.

She and Castellanos did not live together; he lived in [REDACTED] she believed at [REDACTED] and she lived in [REDACTED]. On March 16, 2005, she worked a day tour which was either 0630 or 0700 to 1500 or 1523, she was not exactly sure. When her tour was over, she was going to Manhattan to meet Castellanos. While she was driving there, Castellanos called and said he had been in an accident with the Sebring. He described what happened. It took her 45 minutes to an hour to get to the scene. When she got there, she saw Packer's car parked at the hydrant. Her Sebring was double-parked on the left-hand side about a hundred feet away. She saw Castellanos by her car.

She parked on the right hand side of the street past a driveway. She walked over to look at the damage to both cars and then went to the Sebring and started taking paperwork out of the glove compartment when the police arrived. No RMP's were present at the scene nor were any members of the service present when she arrived.

The two police officers got out of the car, one female went over to her and one went over to Packer. Caballero identified the Respondent as the officer who came over to her and Castellanos. They were near the passenger side tire of the Sebring. Caballero said she told Castellanos to tell the officer what happened, "which he did, which was brief because it was a brief accident, fender bender... He told her when he turned the corner that Mrs. Packer's van was double-parked at the hydrant and that he hit the back tail end of the car."

Caballero said that she did not tell the Respondent anything at that point. "Then she (the Respondent) turned around and said to me 'I know you.' That's when I explained to her that I am on the job."

Caballero indicated that she knew at that time that Castellanos had a problem with his driver's license and that he had a warrant.

Continuing her conversation with the Respondent, Caballero said that the Respondent told her that she had seen her do a domestic violence presentation at Kingsborough College. She said she was surprised someone would recognize her from something like that and that they had a lengthy discussion about it. After that there was no further discussion of the accident and they started talking about the job and that the Respondent did not like where she worked. Caballero said she gave her advice about applying for different things on the job, "I promoted trying to get ahead on the job."

Caballero stated that she gave her registration, insurance card and driver's license to the Respondent and indicated that she was communicating to the Respondent that she was the driver.

Caballero indicated that at the RMP she and the Respondent talked about her being in the Domestic Violence unit, the presentation at Kingsborough, the training she did for teenagers and that the Respondent remembered her bringing her daughter to the conference. After the discussion, she and Castellanos left, he in the Sebring and she in the red Mitsubishi.

In December, she was arrested in relation to the accident and she subsequently pled guilty to the misdemeanor of Offering a False Instrument. She was sentenced to a Conditional Discharge. She did not remember the date that she pled guilty. She indicated that there was no sergeant at the scene.

Caballero also pled guilty to Departmental charges of Offering a False Instrument. She agreed to a penalty of 30 days suspension and "I have to vest out." She asserted that nothing had been promised to her as a result of her testimony. She asserted that she does not know the Respondent and has no personal animosity toward her. Caballero described her (Caballero's) ethnicity as a "white Italian."

On cross-examination, Caballero agreed that at the transit academy she learned that if there were two parties in an incident you should separate them. She learned how to fill out subway reports and did not recall learning what to do if she was in an RMP accident or how to fill out a police accident report. After the academy, she was on patrol for a short period of time "maybe" less than six months, "maybe" less than five months, "maybe" less than four months, she could not be sure. She had "maybe" one arrest in her

eighteen year career. Her next assignment was the Deputy Chief of Department's office where her duties involved "secretarial skills, answering the phone, typing, computer typing." She had no other official police duties in that position. Her next assignment was the Legal Bureau, where her duties and responsibilities were "secretarial." Her next assignment was Chief of Department Domestic Violence Unit. While there she learned how to use the MISD computer system which she does not know how to use now but did know how to use in 2005. Caballero said that she did not recall if she ran a check on Lazaro Castellanos' name before the accident on March 16, 2005. When asked if she knew what a Sprint report is she said, "No, not exactly."

She indicated that when she worked in domestic violence she had various duties. She had to be in touch with all the domestic violence officers within the precincts "to make sure if they needed anything, if they needed training. I did training, I conducted CIC course."

Caballero could not provide the date of the seminar that the Respondent saw her nor could she give a time frame. She indicated that she taught at Kingsborough "maybe a couple" of times. She said it wasn't in the first couple of years (at Domestic Violence) but "it was towards the end of the first few years. I can't give you an exact approximate time because I did various trainings all over the place."

Referring to Kingsborough, she said she spoke in an auditorium or cafeteria but she could not recall how many people were there but it was a large crowd. She agreed that there were over a hundred people present at the couple of occasions she lectured at Kingsborough. She said the purpose was to lecture college students. She did not know if

there was a sign-in sheet for the lectures. She did not recall if she ever told IAB investigators that the lecture was for college students.

Caballero agreed that the Respondent recognized her and initiated the conversation about the lecture at Kingsborough. After agreeing that there are many facets to domestic violence, Caballero said that "the main subject" she would have been talking about that day would have been "teen dating relationship abuse." She then said, "I taught the same thing all the time." When asked if the only subject she ever taught was about teen dating, Caballero responded, "Domestic violence." She was then asked: "It was about domestic violence in regards to teen dating, is that correct?" to which Caballero answered, "Depending on the forum that I spoke to." She was then asked about Kingsborough College and Caballero answered "domestic violence." The questioner then asked "For teens or just domestic violence in general?" to which Caballero responded: "Both."

Caballero indicated that her work at counter terrorism was administrative and that she worked in Coney Island, which was about ten minutes away from her residence. She agreed that she did not perform any police duties and that her work was secretarial in nature.

Caballero said that on the day of the incident, the Respondent told her that she recognized her and that the Respondent then began telling her about all the problems she was suffering on the job and that she did not like where she worked and that she and her partner did not get along with some of the other people there. She recalled that the Respondent said she was on the job for three years.

Caballero acknowledged that on March 16, 2005 she received a call from Castellanos and that she probably spoke to him throughout the day. She acknowledged that she knew at that time that there was an outstanding bench warrant for his arrest. She also knew that he did not have a driver's license and she acknowledged that she let him use her cars. Further, she agreed that he received two summonses for her vehicles. Furthermore, she agreed that he told her that he had told Packer that the car he was driving belongs to a police officer.

Caballero indicated that at the time she got the call about the accident, she was already headed into Manhattan. She agreed that she testified that it took 45 minutes or an hour to get to the scene but that previously she had said it took her 20 to 25 minutes. Her explanation for the discrepancy was that she wasn't exactly sure of the time frame.

She agreed that she knew that Castellanos had an open warrant in reference to a domestic violence incident involving his sister. She did not know at what point she learned about this. She agreed that she wanted to prevent Castellanos from being arrested.

Caballero agreed that she had been served with charges and specification in connection with her arrest. When asked if part of the disposition of the departmental charges involved her agreeing to testify in this forum, she said that she did not understand. She was then questioned by the Court and she agreed that she had pled guilty to the charges against her, that she agreed to a 30 day suspension and that she would vest out. When asked "Isn't it true you also agreed to testify in the forum against Officer Sberna in exchange for being allowed to vest at the end, to be able to get to retire with all pension benefits" Caballero answered, "No." She then agreed that the plea

arrangement did allow her to vest and that that meant she could retire with full pension benefits.

After reviewing the minutes of her Official Department Interview of August 24, 2006, she agreed that it refreshed her recollection that she probably went to Kingsborough College and talked one time, not several. Then on questioning by the Court, she agreed that it would be accurate to say that she gave one lecture at Kingsborough.

Caballero indicated that she was in Domestic Violence from August of 1995 until she went to Counter Terrorism in March of 2002 and that the lecture would have been in the last four years.

With regard to the plea she took in this Court, Caballero said: "I remember standing there, I remember going through it. She was then asked by the Court: "Do you remember your attorney stating that you agreed to testify in this proceeding?" to which Caballero responded; "I don't remember now." The Court then asked if she discussed her disposition with her attorney at the time and she responded in the affirmative and she agreed that she knew what she was doing at the time she entered the plea.

The Court then showed plea minutes to Caballero. After reviewing the minutes Caballero indicated that she remembered that at the time she took the plea she agreed to testify at this trial and that this was part of the plea agreement.

Caballero was then shown a picture (RX E) which was stipulated to be that of Sergeant Raymond O'Connor. Caballero said she had never seen him.

Caballero recalled that the Respondent told her that she had about three years on the job but did not recall her mentioning that she was an active officer. At the scene of the accident, she did not introduce herself to Packer.

Caballero recalled being arrested on December 20, 2005 and being brought to the District Attorney's office but said she was distraught that day and did not recall the details of what occurred. She agreed that on the day of the incident she had been in a rush to get to the scene. She indicated that while she was talking to the Respondent, Castellanos was about 20 or 25 feet away. She then indicated on the photographs of RX A where she was parked, where the Sebring was and where the RMP pulled into the driveway behind her Mitsubishi. She indicated that Castellanos was "standing by the passenger side tire, smoking a cigarette" which was about 20 feet away from where she was talking to the Respondent and Packer was further away.

Caballero indicated that when the RMP drove up, the Respondent got out and crossed the street to the Sebring where she had been standing next to Castellanos. Caballero stated, "She stood like in the middle, almost like a triangle," with each of them about two feet apart. Subsequently, Caballero and the Respondent went over to the RMP.

Caballero acknowledged that on May 5, 2006, in Criminal Court she entered a plea to the "A" misdemeanor for Offering a False Instrument for filing.

On questioning by the Court, Caballero indicated that the discussion involving herself, the Respondent and Castellanos occurred near the Sebring and lasted two minutes, "just long enough for him to explain to her what happened and the conversation redirected totally elsewhere from the accident." Caballero indicated that, at this time, Gomez had gone over to Packer.



Caballero indicated that she and the Respondent went over to the RMP across the street, the Respondent was in the car while she stood outside. They had a rather lengthy conversation lasting about ten minutes. Gomez joined them near the end of the conversation. Caballero reaffirmed that the conversation had nothing to do with the accident. She indicated that she never had a conversation with the Respondent about who was actually driving the car at the time of the accident while they were at the RMP. She never asked the Respondent to list her as the driver even though her boyfriend had been driving at the time of the accident. Caballero indicated that she never asked the Respondent to falsely fill out the accident report. She acknowledged that accident report was the document which was the subject of her plea of guilty.

Caballero acknowledged that she handed her paperwork and driver's license to the Respondent for the purpose of having the Respondent list her as the driver on the report. Caballero said the Respondent knew she was not the driver because Castellanos had "explained the whole car accident to her and said he was the driver." She never discussed with the Respondent that she wanted her name put on the report but that was her intent.

Detective Patrick Streffacio

Streffacio is a 22 year member of the Department, currently assigned to the Internal Affairs Bureau. On December 20, 2005, he was in Group 33 serving under Lieutenant Chapman, who was the team leader on the Jada Caballero case. On that date, he interviewed a witness, Lazaro Castellanos, who was the ex-boyfriend of Caballero.

Streffacio testified that:

He (Castellanos) said that he was driving a car that was co-owned 50/50, by him and Jada Caballero, and that he got into an accident by his

house. He didn't have a driver's license, and that he had some outstanding warrants. And before the police had arrived, he wanted Jada Caballero to come up and try and take care of this for him. So she was working at the time, she left work, drove up there and got there before the police had arrived and spoke to the officers. He told me that she knew the officers and believed that they were in the same academy class together in the police academy, and I asked him what makes you think that. He said because they were very friendly, hugging each other and shaking hands like they knew each other. I said you saw this? He said, yeah, I was there. I watched it.

I said what happened then? He says she came over to the car, meaning Jada Caballero, and asked for the insurance card, at which time he reached over to the glove compartment and retrieved the insurance card and gave it to her and said what's going on? She said, don't worry about it. They, meaning the responding officers, are going to put my name on the accident report and not yours. And he said okay. And basically he said after that one of the officers, not identifying which one at the time, came over and interviewed me as to what happened in the accident.

Castellanos told him that he told the officer that he was making a turn onto Amsterdam Avenue and that he got distracted and didn't realize that there was a double parked car and he struck the double parked car.

Streffacio interviewed Castellanos two more times. On January 31, 2006, he interviewed him and Castellanos reiterated his earlier statement but he added that it was his belief that Packer was going to get a summons for double parking.

Straffacio indicated that Castellanos said he spoke to both of the officers for about two minutes and that they both knew he had been the driver of the car. There was a third interview on June 12, 2006 in which his story did not change.

On cross-examination Streffacio re-affirmed that Castellanos told him that he had spoken to both police officers. Castaellanos also admitted that he had not kept an appointment to turn himself in on the outstanding warrant. Further, Castellanos had told Streffacio that it was his belief that Caballero knew the Respondent through the academy

and that he had discussed that issue with Caballero. Additionally, Castellanos indicated that on the day of the accident, he was waiting for Caballero to come because he was afraid he was going to be arrested.

When asked again if Castellanos said he spoke to one officer or both, Streffacio indicated that his notes were not clear and that he did not know that. He then stated:

We asked him the question sir and he indicated that one of the officers yelled over to him we're going to need your driver's license, at which time he was beginning to walk over to give, I guess, his ID, his photo ID, and at that time Ms. Caballero told him not to worry about it, that she was taking care of it.

Streffacio clarified that according to Chapman's worksheet he was walking over but did not give the identification over.

Lieutenant Joseph Lassen

Lassen is currently assigned to the Movie and Television Unit. He is a 14-year member of the Department who was a lieutenant in Housing and in the Internal Affairs Bureau. As a sergeant, he worked in the Department Advocate's Office as an attorney for four years and in the 70 Precinct. He was a police officer in the 79 precinct.

While in IAB, he was assigned to a case involving Caballero. He noted that Lieutenant Chapman originally had the investigation but he (Chapman) became the commanding officer of the Movie and Television Unit and Lassen received the case and became the team leader in Group 33.

He reviewed the investigative work done before he came on to the case. Up to that point, the case file indicated that there was an automobile accident around 157 St and Amsterdam in which Packer's car was hit by a male driver. A Police Officer Caballero, was on the scene. As a result of his investigation and after conferral with the Manhattan

DA's office, Caballero was arrested. She subsequently pled guilty to filing a false instrument.

In order to close out his investigation, he conducted an Official Department Interview of the Respondent. He believed she was interviewed as a witness but she eventually became a subject.

He then examined the transcript of that interview. With reference to page 6, line 14, he determined that the Respondent's statement that "she [Caballero] told me that she was driving and rear-ended the other woman..." was false based on his interview of Caballero and Packer.

With reference to page 7, line 6 of the transcript, he determined that the Respondent's statement that she did not see Castellanos at the scene was not true because there were numerous witnesses who saw him there.

With reference to page 8, lines 20 through 22, he determined that the statement, "My partner went to the other party involved and she got her side of the story and then told me" was not true because he interviewed Packer who stated that she did not give any information to the partner.

With reference to page 9, line 2, he determined that the statement by the Respondent that she did not observe a red Mitsubishi on the scene was false based on his interviews of Castellanos and Caballero. He also based this conclusion on the fact that "there were phone calls between Lazaro Castellanos and Jada Caballero. Jada Caballero stated that she was driving that car and she came to the scene right after she was called by Lazaro Castellanos." Further, he noted that the car was parked in front of the accident scene and would have been visible to the Respondent.

With regard to page 10, line 5 where the Respondent said that she did not know why she put "he" in the accident report, Lassen stated: "As a result of the investigation we determined that the "he" meant Lazaro Castellanos because he was involved in the accident." When asked how he came to the conclusion that the Respondent in fact knew that Castellanos was the driver, Lassen stated: "Because Jada Caballero is a female and Lazaro Castellanos is a male, and by writing "he" on the accident report, if it was female driver she would have wrote she."

With regard to page 11, lines 19 through 22, Lassen determined that the Respondent's statement "She told me that Lizzie Packer was waiting for a parking spot double-parked on the street and was struck from behind by another vehicle (being driven by Jada Caballero)" was misleading. He determined this because Packer and other witnesses said that the driver was a male.

With regard to page 13, line 22, he determined that the Respondent's statement that she never interacted with Castellanos was false based on his interviews with Castellanos and Caballero.

Lassen determined that the Respondent's statement on page 14 that she did not see Castellanos in the company of Caballero was "false and misleading..." He based this conclusion on his interviews of Caballero and Castellanos.

He also determined that the Respondent's statement on page 18 to the effect that the first time she saw Caballero was at the scene of the accident was also "false and misleading." He came to this determination "through the numerous interviews of Police Officer Caballero who stated that Police Officer Sberna actually offered the fact that she

was – she saw her at a domestic violence class, meaning Police Officer Sberna saw Police Officer Caballero who was giving a lecture at the domestic violence class.”

Lassen also determined that the statement the Respondent made on page 22 of the transcript, indicating that Sergeant Raymond O'Connor was at the scene of the accident was “false and misleading.” He came to this conclusion based on his investigation “we determined that Sergeant O'Connor was not at the scene and that was done through the interview of Police Officer Caballero as well as the police officers who were driving with the sergeant that day.” Lassen indicated that he conducted an interview with O'Connor which contributed to his conclusion. Lassen stated that “Sergeant O'Connor stated that he was at the scene, but our investigation – he had no memo book entries, and we determined that he was not at the scene.”

With regard to the Respondent's statements, Lassen concluded: “that they were misleading and made me conduct additional investigative steps to see what was going on with the accident. After conducting the interview, the investigation got more convoluted and I needed to do numerous additional steps.” Among the extra work he had to do, Lassen said he had to re-interview Caballero twice, he had to re-interview Packer and he had to try and find Castellanos which required him to travel from Brooklyn to upper Manhattan. He also had to get command logs and roll calls from the 33 precinct and “I had to again check if a Sprint copy was available and if the 911 tape was available.”

He also had to interview O'Connor because he had not been mentioned before. He also had to find and interview the two officers who worked with him. “If I would have known what had happened from the GO-15, the investigation would have ceased.”

Lassen said the Respondent's statements led him to do a great more work before he could close the investigation.

Lassen described the Sprint print out as the communication from the 911 operator to the radio dispatcher within the Police Department. "All this information on the Sprint is on the screen in front of the radio dispatcher for that division and that information is fed to the officers on the scene. So it would include who was assigned and who was on the scene. Any time a police officer goes over the radio, they are imputing into that Sprint copy so it is pretty long."

Lassen indicated that the results of his search for the Sprint printout were negative, "It did not exist." Lassen indicated that if he had the Sprint printout it would have told him who was at the scene of the accident for the police department.

Lassen indicated that he believed that Lieutenant Morrissey of Counter Terrorism investigations requested the Sprint and he believed Lieutenant Chapman did as well. All the results were negative, "I believe there is a worksheet in the case folder stamped from the communications division."

Lassen indicated that the procedure to request a Sprint printout was to prepare a UF-49 and send it to the Communications Division listing the vicinity of the location as well as the date and approximate time. Lassen indicated that is what he did.

On questioning by the Court, Lassen again asserted that there was no Sprint report for March 16, 2005 and he indicated that a 911 and Sprint job were both requested and were not available.

On cross examination, Lassen was asked to examine work sheet 13 from his case folder. Lassen indicated that this was a request by Morrissey for the 311. The material

requested was for March 16, 2004. Lassen pointed out to the Court that 311 is not the Sprint report it involves the Mayor's office and "that has nothing to do with the police department." Lassen then identified worksheet number 6 as relating to a request for the 911 tape clarifying that "on worksheet 6A-1 there is a request for the 911 tape as well as a copy of the Sprint job in connection with this job." Lassen was then asked to look at the requested for the Sprint report and he noted that it was "March 16, 2004." Lassen agreed that this was a date one year before the incident in question. He then identified worksheet 14 as being the result for the incorrect date.

Lassen was then asked: "Is there any other time during the investigation where someone, any investigator, sought, according to the work file, according to the case file, to obtain the Sprint results for March 16, 2005?" Lassen answered; "I'm looking now. It doesn't appear so."

Lassen was then handed a document (RX D) and asked to examine it. He identified it as a "duplicate Sprint job" and agreed that it matched the motor vehicle accident that occurred on 157 Street between St. Nicholas and Amsterdam Avenues. He also agreed that it showed that someone else was present at the scene but denied that it was the sergeant.

Lassen agreed that the notation 33D on the document stood for a sector in the 33 precinct, sector David. Lassen was then asked what the notation 33S stands for and he replied that it was 33 Sam which would be a sector. Lassen said "one hundred percent" it could not indicate the sergeant. He said this based on his experience in the Department.

Lassen identified the document as a duplicate copy of a Sprint job. He said it was not the full Sprint job as the full Sprint job would include the person who called 911. He



said it would have a lot more detail. Lassen indicated that the document was a partial Sprint report for the incident in question. He further opined that a full Sprint report would not be available at this time as the records are purged after two years.

Lassen was then given a three page document which he identified as the full Sprint report for this incident involving the accident between Caballero's automobile and Packer's automobile. It was received in evidence, (RX D).

Reviewing the exhibit, Lassen said he could not say "a hundred percent" that the first page reflected a search for an accident in the 33 Precinct on March 16, 2005. Referred again to the notation 33S Lassen said "from what I know as a police officer and having 14 years on the police department, this would indicate 33 Sam but the 33 Precinct doesn't have a Sam," however he indicated that he was not "a hundred percent" sure of that.

Examining a document from his investigative file, he indicated that it was the roll call for March 16, 2005 (RX F). Lassen indicated that the roll call indicated that O'Connor was the patrol supervisor on the 4 by 12 tour, working from 1450 to 2347. On questioning by the Court, Lassen confirmed that O'Connor would have been the patrol supervisor at 1729 hours.

Lassen acknowledged that he was present at O'Connor's Official Department Interview on August 16, 2006. He confirmed that O'Connor had stated that he responded to the accident at 157 Street between St. Nicholas and Amsterdam Avenues. He agreed that O'Connor described an off-duty member of the service at the scene as a dark skinned Hispanic female. Lassen was then asked why he had previously testified that the Respondent made a false and misleading statement when she had said that O'Connor was

at the scene and he agreed that he had said that. He was then asked if O'Connor's statement contradict that and Lassen replied: "No, no. The sergeant stated he was there, but during the course of the investigation I thought the sergeant was lying as well." Lassen indicated that he "absolutely" thought the sergeant was lying. He said he did not bring charges because he was not in the Department Advocate's Office at the time but acknowledged that he had previously worked there and that he was quite familiar with how that office operates. Lassen agreed that if he found a sergeant to have lied that would be a material matter.

When asked why he believed that O'Connor was lying, he stated that the Respondent had been interviewed three times and only on the last occasion did she mention that the sergeant was present and that it had never been mentioned in the prior two years of the case. He stated that he interviewed the two officers who were with the sergeant and they said they didn't remember the incident. This led him to believe that the sergeant was not there.

Lassen acknowledged that he did not know why O'Connor would lie and that he could not testify as to his state of mind. He did not believe that he requested instruction on whether to prepare charges and specifications against the sergeant and the Department stipulated that no request for charges was made. Lassen then said that O'Connor was very close to retirement but on questioning by the Court he acknowledged that he was aware of 30 day cases and agreed that a case of lying at an Official Department Interview might merit pursuing a 30 day case. Lassen did not know when O'Connor actually retired.

Lassen agreed that there was no sector Sam in the 33 precinct. He stated that he did not know what 33S was but it "definitely does not mean sergeant." He agreed that he did not know what 33S means.

Lassen acknowledged that he did not get records from the Domestic Violence Unit regarding a lecture by Caballero at Kingsborough College but he believed Chapman made that effort and "he could not find it." He acknowledged that he made no check of the Respondent's records to see if she had any type of DV training and he did not believe Chapman did either. He was asked if consideration was given to verify that there was a date and time that both the Respondent and Caballero were at Kingsborough College and Lassen indicated that "Yes it was and I believe Lieutenant Chapman did and I believe he wasn't able to find that." He further agreed that the only evidence regarding the Kingsborough College encounter was Caballero's statement.

Lassen acknowledged that a review of the Respondent's CPI shows nothing negative except this investigation. He agreed that at the time of incident the Respondent had 92 arrests.

Lassen agreed that the Respondent had only had two Official Department interviews and that she mentioned Sergeant O'Connor's presence at the second of those interviews. He indicated she had also been interviewed with an assistant district attorney. Further, he indicated that the Respondent had been interviewed as a subject from the beginning. Lassen indicated that he was never able to interview Castellanos and that he did not believe he ever said Castellanos was credible. However, when confronted with his earlier testimony in the trial, he conceded that he had determined that the Respondent

had been false and misleading at her Official Department Interview, based on the statements of Caballero and Castellanos.

Lassen agreed that he never met Castellanos. He agreed that Caballero broke down and started crying several times during her interview. When asked why he found Caballero to be credible, Lassen indicated: "Just the way I interviewed her, her body language, the way she testified. She seemed very credible." He also said that this was coupled with his two year investigation and the investigative steps conducted by previous investigators. Further, Lassen said, "She had no reason to lie."

However, Lassen agreed that at the time he interviewed her, the charges and specifications were not adjudicated although her criminal case was done.

Lassen agreed, that on his direct examination, he indicated that among the additional investigative steps he had to take in this case was to attempt to get the Sprint/911 records. He acknowledged that this was not indicated on any worksheet. He stated: "No. I believe on one of the team leader reviews it's a directive from the advocate to get the Sprint, and I believe I put the original worksheet number 14 and 16 as those steps." He agreed that these were the worksheets that were incorrect to begin with. He agreed that rather than run his own separate check as directed, he just referred back to the folder. He acknowledged that this was the first time he realized the error of the wrong year being requested.

When questioned whether his mistake was similar to the one the Respondent made when she wrote "he" in the accident report Lassen said that he believed that the use of the word he referred to Castellanos and said the two situations were "Apples and oranges." Lassen then insisted that he did not lie, that he did not complete the worksheet

stating: "I didn't complete that worksheet." He was then questioned regarding the fact that he had testified to having taken additional investigative steps, noting that when he was asked to create another Sprint, he simply referred to the existing worksheets. Lassen said that he did read the worksheets but didn't catch the different dates. On questioning by the Court, Lassen acknowledged that he made a mistake and that it was possible that the Respondent had made a mistake.

Lassen agreed that based on his interview of Caballero, it was Caballero's intention to mislead the Respondent and have the Respondent incorrectly list her, Caballero, as the driver. He also agreed that when O'Connor was interviewed, he had said that he had not seen Castellanos at the scene. Lassen agreed that it was his belief that O'Connor had lied about that because, "I think Lazaro Castellanos, as a result of the investigation, was at the scene, I believe he was there." On questioning by the Court, Lassen agreed that there were a number of people at the scene and that it was possible that O'Connor, rather than lying, might have been incorrect or that he simply did not notice Castellanos at the scene.

Lassen insisted that it was not possible that the Respondent did not see Castellanos at the scene and this was based on the interviews of Caballero and Castellanos as well as Packer.

Lassen reasserted that he believed O'Connor had lied when he said that he did not see Castellanos at the scene and that this was based, in part, on the statements of other witnesses. Lassen acknowledged that he did not interview those witnesses and that he was not sure if there was a tape of the interviews.

On questioning by the Court, Lassen indicated that he personally interviewed Packer but that he "honesty" did not know if she saw the Respondent interact with Castellanos.

Lassen indicated that Packer did not mention anything about O'Connor being present. He agreed that Packer and the other witnesses made no mention of a sergeant being at the scene. Lassen agreed that he first learned of the claim that Sergeant O'Connor was on the scene on August 9, 2006 and that he never went back and interviewed any of the civilian witnesses about this.

Lassen never tried to estimate the damage caused by the accident but agreed that it was fairly minor and that there were no injuries.

After reviewing the worksheet regarding the interview of a witness, Alfred Patterson, Lassen agreed that Patterson never observed any police speaking to the male driver of the vehicle. After reviewing the worksheet regarding an interview with a witness, Verna DeMary, he agreed that DeMary never indicated that the male driver, Castellanos, ever spoke with the police.

On continued cross-examination, Lassen indicated that a review of Caballero's record indicated two prior incidents, one involving a lost ID card and another involving a misuse of time, in addition to the current matter. Lassen indicated that the investigation showed she owned two cars, a red Mitsubishi and a 2004 Chrysler Sebring. He was not aware of her owning a third car, a silver Mitsubishi. He vaguely remembered that Castellanos had claimed the Sebring was owned 50/50 by them.

Lassen acknowledged that in the interview on December 20, 2005, Castellanos gave very specific information about where the Respondent had seen Caballero before the

accident. Lassen indicated that during the interview, Castellanos said that one of the officers recognized Caballero from a lecture that she gave at the police academy. Lassen indicated that while he questioned Caballero about Kingsborough College, he never questioned her about lecturing at the police academy.

Lassen testified that during the investigation there was a check done on her cell phone and towers used during the period from approximately 4:30 P.M. He indicated that there was a call at 4:34 P.M. picked up on Cropsey Avenue, Brooklyn, and another at 4:49 P.M., picked up at the BQE and 44 Street, Brooklyn. The next hit is Pearl Street and Peck Slip in Manhattan. Lassen agreed that in each of her interviews, Caballero stated that it took her 20 to 25 minutes to arrive at the scene. On questioning by the Court, Lassen indicated that there is a call in upper Manhattan at 5:26 P.M. picked up at Macombs Street and 152 Street. He agreed that one could conclude that it did not take Caballero longer than 40 minutes to get to the scene. Lassen believed that the initial call from Castellanos to Caballero was at 4:14 P.M. which used a tower at Broadway and 153 Street. Lassen indicated that Caballero had worked a tour that ended at 3:00 PM and she signed out at that time.

Lassen had interviewed Packer twice and he spoke to Caballero on two separate occasions. Each time he allowed Caballero to review her prior G-15 interviews which she did. Lassen agreed that he never spoke with Castellanos, DeMary, Patterson or Miller.

On re-direct examination Lassen noted that Caballero and Castellanos both had cellular telephones registered to Caballero. He noted that at 4:13 P.M., the closest cell site to Caballero was Avenue Y and Knapp Street who received the call from Castellanos

whose cell site was at Broadway and 153 Street. The next call at 4:34 P.M., Castellanos' cell site was Broadway and 157 Street, another tower in proximity to the accident scene. Looking at the next couple of phone calls, Lassen indicated that Castellanos location remained the same. The last phone call between the two of them is at 5:26 and Caballeros cell site is at Macombs<sup>3</sup> and 152 Street which Lassen said was close to the accident scene. That call Lassen concluded would have ended at 5:30 P.M. which is the same time the Respondent listed herself at the accident scene. He also concluded that Caballero would have arrived at the accident scene at 5:30 P.M.

On questioning by the Court, Lassen agreed that the 4:13 P.M. call could have occurred before the accident and that call notifying Caballero of the accident could have been the call at 4:34 P.M., however Lassen indicated that he believed the first call regarding the accident was at 4:13 P.M.

Police Communication Technician Eddie Rodriguez

Rodriguez is an 8-year member of the Department. He indicated that PCTs are responsible for taking emergency 911 calls from the public. They are also responsible to dispatch these calls to the field units. Currently, he is a tape technician, reproducing audio for the DA's office and others. He had two months of training for 911 and one month of training for dispatch work. Uniform members of the service do not get this training because a PCT's responsibility is to know the coding system and the routing system as well as connections to EMS, FD and SOD. He said he had experience in printing out Sprint reports as well as in interpreting them. He indicated that the Sprint

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<sup>3</sup> Shows at Macon Street in the transcript however DX 3, the records which Lassen referenced at the time indicates Macombs Street.



report is a written account of the 911 call with the date, address and code. Rodriguez indicated that he has testified in the Grand Jury and in Criminal Court previously and as been qualified as an expert three or four times. (After a brief *voire-dire* Rodriguez was qualified as an expert on consent).

Rodriguez identified DX 5 as a Sprint report he prepared which is the report of an automobile accident that occurred on March 16, 2005 at 502 West 157 Street between St. Nicholas and Amsterdam Avenues.

Rodriguez indicated that it was a "pick-up job where the unit comes over the air and tells the dispatcher directly without a 911 call, directly to the dispatcher, that there was an accident and that they are going to be handling this job at 1726 hours, and the unit is 33 David sector."

Rodriguez indicated that, in his opinion, the first police vehicle on the scene was 33 David. One minute later, at 1727 there is another entry for 33S. Rodriguez stated that "In my training 33S is not a designation that we usually use." Rodriguez explained that it could mean a scooter vehicle but "usually there are four numbers and we use the last two numbers." He explained that scooter 1444 would be S44.

When asked what else 33S could stand for he said "Could be a sergeant, but we usually use ST1 for the patrol sergeant."

Rodriguez indicated that the usual code for assistance is an "85" and there was no "85" on this report.

On cross-examination, Rodriguez indicated that the audio transmissions are kept for 180 days. Rodriguez indicated that an "85" is a call for assistance and the urgency is usually detected in the "tone and condition." When asked by the Court what actually

occurs, Rodriquez stated: "if a sergeant asks for someone, he probably overrides central, which is not really supposed to happen, and asks maybe by name, can you pass by over here, and you know."

When accounting for discrepancies between the two Sprint reports (DX 5 and RX D) Rodriquez explained: "You know, every dispatcher, just like every officer, you have a more efficient dispatcher at times. I would say that, you know, either, its only my speculating, either this unit came over the air saying they were no longer handling it and leave it to 33 David to handle, or they forgot or they didn't just put them in the other job."

Rodriquez also indicated that the job also came in from a 311 call which was transferred to 911 and the reports were merged, and "they 99 the unit that means they take them off of one and put them on the other one with the most information. .."

Rodriquez also noted that the report indicated that the accident occurred within sector Adam of the 33 precinct.

When asked by the Court to give a chronology of what he believed occurred based on the Sprint report, Rodriquez stated that 33 David was driving around the area saw that an accident had occurred and stopped to handle the situation as a pick up job. Another unit 33S called in and asked to be shown as on the scene as well.

A minute later, a 911 by a civilian was processed and the dispatcher merged the jobs. The record shows that the civilian "Lizzie Tracker" told them there was a two car accident with no injuries and that she stated she had been waiting more than an hour for the police.

Rodriguez further indicated that "Well if this call came in a minute after and she says the police are not on the scene and she is still waiting, I wouldn't understand why she didn't see them and why she would have to make the call." But he agreed that it was logical to assume that she made the call to 311 before the pick up occurred. 33 David went back on duty at 1803, there was no indication as to what happened with 33S.

#### The Respondent's Case

The Respondent offered into evidence the Official Department Interview of Sergeant Raymond T. O'Connor, (RX C) and testified in her own behalf.

#### Sergeant Raymond T. O'Connor

The parties agreed that Raymond T. O'Connor was a sergeant with the Department. He was the subject of an Official Department Interview on August 16, 2006. Subsequently he retired and he has since died. A transcript of that Official Department Interview was received in evidence as RX C and is summarized as follows:.

O'Connor indicated that he had been working on March 16, 2007 as the Patrol Supervisor. He had two men working with him on the Conditions team.

O'Connor stated that he was either flagged down or directed by Central. He recalled that there was a dark skinned Hispanic female who identified herself as an off duty member of the service who told him she had been involved in an auto accident which appeared to O'Connor to be a "fender bender" or a "very small accident."

O'Connor recalled the driver of the other car as also being a dark skinned female Hispanic. He stated that there were no passengers in either vehicle. He was shown a picture of a male, presumably Castellanos, and said that he "never saw that individual."

O'Connor stated that the off duty member of service approached him but he did not ask what had occurred. He said that she did not appear to be under the influence and at that point the sector car arrived. He directed them to take the accident report. He said he was dealing with crowd control.

O'Connor said that the sector car with the Respondent and Gomez arrived about 15 minutes after he did. O'Connor indicated that no one told him that Caballero was not the operator of the vehicle or that she had arrived after the accident. He said he could not identify a red Mitsubishi Eclipse being at the scene.

He recalled Caballero coming over to him and that Packer was more to the corner. He reiterated that Caballero came over to him, that he noted that she did not seem intoxicated, that she indicated that she was involved in the accident and that it was a "common fender bender" and he treated it like that. O'Connor was not aware that Caballero had been arrested with regard to the accident.

#### The Respondent

The Respondent testified that she was appointed to the Department on July 1, 2002. Her first assignment was to the Police Academy. The Respondent asserted that she never received any special training from Caballero. After completing the Academy she was assigned to a foot post in the 32 Precinct from January 2003 to about May 2004

when she went to the Manhattan North Task Force, on a foot post as part of Operation Impact. In January 2005, she was assigned to the 33 Precinct where she is still assigned.

In the 33 Precinct she started on a foot post, then patrol and to her current assignment in anti-crime.

The Respondent indicated that she has made approximately 250 arrests since the beginning of her career.

The Respondent indicated that she received some brief training in the completion of police accident reports, basically just familiarizing them with the paperwork. She said she has filled out approximately one hundred such reports in her career in the Department. Prior to March 16, 2005 she had completed about 30 such reports.

The Respondent indicated that she has never received any command disciplines. She indicated that she has received two meritorious awards and seven EPD's. She also received a certificate from the Police Commissioner and was given a pen. She indicated that her last performance evaluations were 3.5 and 4.0.

The Respondent indicated that her first partner was Jessie Brown at the 32 Precinct. Her second partner was Gomez.

With regard to the accident at issue, she said that she received the assignment when O'Connor went over the radio and asked for an available sector to come to the location at 157 and Amsterdam. The Respondent indicated that on that day she was working a 4 to 12 tour and that she was assigned to patrol in Sector David. Looking at a map of the 33 Precinct (RX H) she indicated that there are four sectors. She noted that the precinct starts at 155 Street and goes up to 179 Street, river to river. Sector "Adam," she explained, goes from Edgecomb to Broadway and from 155 Street to 168 Street.

To the west of Broadway is Sector "Boy" which has the same southern and northern boundaries. To the north of Sector "Boy" is Sector "David" which starts at 168 Street and goes up to 179 Street. To the east of Sector "Boy" is Sector "Charlie" from 155 to 168 Street.

The Respondent noted that her assignment was Sector "33 David" which is the upper part of the command in the west. She noted that 157 and Amsterdam is in Sector "Adam" which is the south eastern part of the precinct.

The Respondent recalled that she was dealing with another vehicular accident on West 179 Street along the Henry Hudson Parkway. She indicated that they were on the highway, and that they "cut across" exiting at 178 Street and then took Amsterdam Avenue straight down.

She indicated that they had gotten a radio call from Sergeant O'Connor asking for an available sector to come over. She indicated that O'Connor was the conditions sergeant but he also worked as the patrol supervisor. She indicated that she had know O'Connor for about a month at that time because she arrived at the precinct about a month before the incident. The Respondent said it took her approximately ten minutes to get from her previous assignment to the accident scene.

The Respondent indicated that when she got to 157 Street she pulled her RMP out of traffic by driving into the driveway of a gated parking lot. Describing what happened, she said:

"Then Sergeant O'Connor had told us to take the police accident report, that it was a simple fender bender, and a MOS was involved. At that point, he left the scene. Officer Caballero was the one who approached me. She provided me with her driver's license, her registration and her insurance card. My partner Myra (Gomez) went to the other party involved, the other motorist, Lizzie Packer. That's when I got Officer

Caballero's story, and I started to document it on the police accident report. She told me she was driving, turned down onto West 157 Street, and rear-ended the back of a minivan, tapped the rear part of the minivan."

She stated that she initially met Caballero when she arrived and she spoke to her on the street. The Respondent indicated that O'Connor had an NYPD van which was further down the block on the north side of the street. She said there were two officers with the sergeant and she identified them as Dominquez and Cuevas. The Respondent indicated that Caballero approached her in the middle of the street. The Respondent said that Caballero handed her the paperwork, which consisted of her driver's license, registration for the vehicle and the insurance card for the vehicle. The Respondent indicated that she went to her RMP and that Caballero was then standing outside on the driver's side.

The Respondent was shown a picture of Castellanos and stated that she did not see anyone who looked like that at the scene. She stated: "I never interacted with this individual and I never saw him on the street." She said that testimony about a triangle conversation with Caballero and Castellanos was "incorrect."

The Respondent indicated that Gomez returned with the driver's license, registration and insurance information for Packer's vehicle and that, "Myra (Gomez) had informed me of what the other motorist, Lizzie Packer had told her in regards to the vehicle accident and I documented that in the narrative portion of the police accident report."

The Respondent indicated that her use of the word "he" in the accident report was "a mistake" stating: "We were actually coming from another vehicle accident just prior to

that with two male motorists involved, so we were filling out the narrative, it was just a mistake.”

The Respondent stated that the sergeant left right away and that he left “not even a minute” after Caballero approached. She said O’Connor had informed her that it was a simple fender bender and for her to just do the accident report and he left the scene.

The Respondent stated that she has never been in Kingsborough College. She indicated that in 2002 she was 21 years old and that in 1994 she was 14. She indicated that she did not ever attend a domestic violence seminar of any type and that she had lived in Westchester County.

The Respondent stated that she never interacted with Packer who was outside of her vehicle seven or eight car lengths away up the hill. The Respondent described testimony that she gave Caballero a hug as “very incorrect” explaining that its unprofessional and “I don’t know her and I wouldn’t act in that way on the street.”

The Respondent denied that she ever discussed career options with Caballero and stated, “I don’t know why she would be giving me career advice. Because from her record, she really hasn’t had much of a street experience to my knowledge and the experience that I have acquired...I spent my entire time on the street.”

On cross-examination, the Respondent indicated that she has been on the job for seven years. She acknowledged that she has made a lot of friends. She agreed that if she were asked to help someone with a flat tire she would do that. Further, if someone had a personal problem and wanted to talk to her, she would do that. With regard to the date of the incident she said that she did not see Castellanos there and that she did not speak to



him. When asked if she helped Castellanos because Caballero asked her to, she said that she did not.

She indicated that the assistant district attorney did not ask her to describe the events as she saw them. She said that the assistant district attorney showed her the police accident report and told her and her partner that they would have to testify against Caballero in the grand jury. She agreed that she did not tell the assistant district attorney that there was a sergeant present and she said that she assumed he had the documentation and knew that he was there. The Respondent agreed that she did not ask the assistant district attorney if he knew O'Connor was there. She also agreed that she never discussed the fact that she was called to the district attorney's office with O'Connor.

She agreed that she did not mention the fact that O'Connor was present at her first Official Department Interview even though she was interviewed as a subject.

She agreed that at the end of the interview she was given an opportunity to add anything she wanted. When asked if she made a conscious decision not to mention O'Connor she responded: "It wasn't a conscious decision, because again, I thought that that was already known, that he was at the scene because it was documented."

The Respondent indicated that she believed that Gomez got information about the accident from Packer because Packer's statement is exactly what is in the narrative of the accident report. With regard to who was the driver of the Sebring, the Respondent stated: "I don't know what she (Packer) told Officer Gomez. I am assuming Jada Caballero gave me her documentation that she was the other motorist."

While writing up the accident report, the Respondent indicated that she and Gomez were in the vehicle and that Caballero was outside of the vehicle. She indicated that a conversation was going on and that she was not distracted from writing the report.

The Respondent indicated that there were people on the sidewalk when she arrived at the scene and maybe a few people in the street but not a large crowd or anything.

On re-direct examination, the Respondent indicated that the meeting with the assistant district attorney was brief maybe 20 or 30 minutes and the subject matter was basically about the fact that they would be used in the grand jury to testify against Caballero. There was no discussion of Castellanos or O'Connor.

#### FINDINGS AND ANALYSIS

On March 16, 2005, Lizzie Packer was sitting in her car, a Chrysler Pacifica, which was near a fire hydrant waiting for a proper parking spot to become available on her block. The location was on West 157 Street near the corner of Amsterdam Avenue in New York County. A grey Chrysler Sebring automobile driven by Lazaro Castellanos, aka Eric Storm, had a minor collision with the rear of her vehicle as he rounded the corner onto West 157 St.

Ms. Packer insisted on waiting for the response of the police. Castellanos, who did not have a valid license and was wanted on a bench warrant, called his then girlfriend Caballero, a police officer assigned to the Counter Terrorism Division, who was the registered owner of the Sebring. Caballero came to the scene in another car she owned, a

red Mitsubishi Eclipse which she parked further down on West 157 St. on the opposite side of the street from where the Sebring was and just beyond a driveway.

The Respondent and her partner Gomez also arrived at the scene in an RMP which was pulled into the driveway. As the Respondent was writing up the accident report, Caballero handed her the paperwork for the Sebring as well as her driver's license. The Respondent listed Caballero as the driver on the accident report.

Subsequently, Packer received a copy of that report and noted that the driver listed for the Sebring was a female when she knew that the driver had been a male. Her complaint launched this investigation which resulted in charges against Caballero, Gomez and this Respondent.

Specification No. 2 alleges that the Respondent filed a false instrument (the accident report) while Specification No. 1 alleges that she lied during an Official Department Interview in an effort to foil the investigation and conceal the misconduct regarding Specification No. 2. These specifications frame a very simple and straightforward factual issue – did the Respondent knowingly and intentionally list Caballero as the driver of the Sebring when she knew that the actual driver of that vehicle at the time of the accident was Castellanos?

To make that determination requires the examination of an almost surprising abundance of conflicting evidence. For instance, there is a notation in the accident report written by the Respondent in which she describes the driver of the Sebring as "he." The Department views this as a kind of Freudian slip while the Respondent asserts it is a simple error. Then there is issue of whether a retired, and now deceased, sergeant lied at

an Official Department Interview to protect the Respondent, a matter which itself could have been the subject of a Departmental trial.

At the outset of this trial, the Court asked the Department Advocate for a list identifying the specific statements made by the Respondent at her Official Department Interview that it believed were "misleading" as alleged in Specification No. 1. The Department provided that list (CX 1) which enumerates ten instances in which it claims the Respondent lied. These ten items cover most of the factual issues in dispute. This Court will endeavor to discuss these and other issues it has identified so that a conclusion can be reached on the central issue of the Respondent's knowledge and intent.

I. - Did Caballero arrive at the scene before the Respondent?

The Department has offered conflicting testimony on this issue. The Department's key witness on this was Caballero who testified that she arrived before the Respondent and her partner Gomez. That would seem to settle the matter but there was testimony from another Department witness, Packer, who gave some testimony that indicated that the Respondent and her partner were on the scene when Caballero drove up in the red Mitsubishi.

Such a sequence of events would present very strong evidence that the Respondent knew or should have known that Caballero was not the driver of the Sebring.

Unfortunately, on this critical issue, the testimony from Packer begins with a leading question from the Assistant Department Advocate:

Q. How long after the two female police officers showed up did the lady show up in the red Mitsubishi?

A. It could have been 10 minutes, but I am not sure. It could have been less?

Q. So the lady in the red Mitsubishi showed up after the police?

A. Right. (T-39).

However on cross-examination, after stating that the "policeman" arrived first, Packer went on to say: "I think the red Mitsubishi pulled up first. I am not exactly sure, but it could have been first." (T. 74-75).

Packer's uncertainty on this issue is unsurprising. When the red Mitsubishi arrived, she would have had no idea that it was related to the accident and thus it would not have been a direct focus of her attention. As events unfolded, at some point, she might have recognized that there was some connection between the driver of that vehicle and the driver of the car who hit her, but it would not have been until she saw the accident report, weeks and possibly months later,<sup>4</sup> that the real significance would have become apparent.

In its closing argument, the Department also cites the hearsay statement of Shirley Miller who reportedly stated that "a red vehicle pulled up and parked in front of the police car." The Department infers that this means that Caballero arrived after the Respondent and her partner Gomez. But the Department fails to mention what another hearsay witness, DeMary, said on this subject. During his first interview, he said that the two police officers and the Hispanic woman in a small red car arrived at about the same time. In a second interview, he clarified that the female Hispanic showed up on the scene right before the police arrived.

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<sup>4</sup> Packer did not state exactly how long it took her to obtain the accident report but after several failed attempts to obtain the report from the precinct a friend obtained it for her from Police Headquarters (T. 46 - 49).

This Court can see no reason to believe one hearsay statement over another. Indeed the hearsay statements are of limited value as they were not tape recorded and the only evidence we have of what was said are the notes of the various officers who conducted the interviews, none of whom testified at this trial.

Caballero offered clear and unequivocal testimony about who arrived first and she stated, repeatedly, that she arrived before the Respondent and her partner. The Department's argument that this is some kind of error in recollection to be ignored makes no sense. Unlike Packer, Caballero knew the significance of her being there and dealing with responding police officers would have been part of that. Caballero would have been focused on the issue of who arrived first. Caballero never expressed any uncertainty on this issue. The hearsay statement of Castellanos also puts Caballero on the scene before the Respondent and her partner.

Examination of time and cell tower records of the cell phone used by Caballero (DX 3), as well as the Sprint report (DX 5 and RX D) indicate that Caballero and the Respondent arrived at the scene at about the same time but cannot provide specific information about who arrived first or by how long.<sup>5</sup>

As will be explained later in this decision, this Court has serious questions about the credibility of Caballero but hers' is the only unequivocal testimony offered by the Department on this issue and it is supported by other evidence offered by the Department in the hearsay statement of Castellanos. Further, it is consistent with the testimony of the Respondent and the statements of Gomez and O'Connor.

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<sup>5</sup> A more detailed discussion of the cell tower records will be found later in this opinion.

Given Packer's uncertainty and Caballero's clear testimony that she arrived first, the only conclusion that this Court can draw from the available evidence is that Caballero arrived at the scene before the Respondent and her partner Gomez drove up.<sup>6</sup>

## II. Alleged misleading statements made by the Respondent

In its submission to the Court (CX 1), the Department listed quotations from the Respondent's Official Department Interview of August 9, 2006 citing the page and line numbers in the transcript of that interview. The Department contends that each of these statements is misleading and was given with the purpose of preventing the Department from coming to a conclusion as to what transpired at the scene of a car accident on March 16, 2005.

Item 1: The first quote references page 6 lines 14 – 15 and reads as follows: "She (Jada Caballero) told me that she was driving the car and rear ended the other woman involved."

The Respondent testified at her Official Department Interview and at this trial that Caballero told her that she was the driver of the Sebring at the time of the accident.

Caballero testified that upon arriving at the scene of the accident, the Respondent approached the Sebring where she was standing with Castellanos. She told Castellanos to tell the Respondent how the accident occurred. Caballero indicated that Castellanos informed the Respondent how the accident had occurred and that he had been the driver at that time.

Caballero then went with the Respondent to the vicinity of the RMP where the Respondent completed the accident report. Caballero said at that point there was no

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<sup>6</sup> In his statement, Castellanos also indicated the Caballero arrived before the officers.

further discussion of the accident however they discussed other things including Caballero's career in the Department and the fact that the Respondent recognized her from a Domestic Violence lecture she gave at Kingsborough College some time ago.

Caballero indicated that she did not discuss the circumstance of the accident with the Respondent nor did she ask the Respondent to falsely complete the report but merely handed the paperwork for the Sebring along with her driver's license to the Respondent.

Castellanos did not appear at this trial. A report of his hearsay statements were received in evidence through Streffacio. In these statements, Castellanos claimed that he told the Respondent and possibly her partner Gomez as well, that he was the driver at the time of the accident. He indicated that at some point Caballero and the Respondent hugged each other. He also indicated that at some point he was called over to the RMP to give his identification paperwork but stopped when Caballero told him it would be unnecessary.

There is no other direct or circumstantial evidence regarding what was or was not told to the Respondent by Caballero so that determining if the statement of the Respondent on this issue is true or false is strictly an issue of credibility; either one believes the Respondent or one believes Caballero and Castellanos.

There is no special process by which this Court can determine who is telling the truth and who is lying. In the end such a determination is a judgment call which this Court can endeavor to explain.

Even before the accident, Caballero knew that her boyfriend Castellanos had no driver's license and was wanted on an outstanding warrant.<sup>7</sup> She knew or should have known that he was subject to immediate arrest. Her conduct before this incident violated

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<sup>7</sup> Caballero could not recall if she misused a Department computer to obtain or confirm this information.



Department rules regarding criminal association and she was certainly guilty of failure to take police action with regard to Casellanos' outstanding warrant. Perhaps more significantly as it relates to this incident, she allowed Castellanos to operate motor vehicles registered in her name knowing that he had no license to drive.

Upon learning of the accident from Castellanos she came from the south end of Brooklyn to the northern portion of Manhattan for the express purpose of preventing Castellanos' arrest and she engaged in criminal conduct in the process. She subsequently pled guilty to a misdemeanor for that criminal conduct. Castellanos, who did not appear in person at this proceeding, is also apparently ethically challenged. Moreover, there are several inconsistencies between his version of events and that of Caballero. For instance, Caballero said that once she went over to the RMP, there was no further discussion of the accident while Castellanos told the investigators that at one point the officer, presumably the Respondent, called out to him and said she would need his identification but he was told by Caballero to forget it. This interaction does not appear anywhere in the Caballero version of events and is inconsistent with Caballero's version because she said that there was no further discussion of the accident and she simply handed her paperwork to the Respondent.

Caballero seems to have avoided any active police work in her eighteen year career in the Department yet according to her, she felt free to give advice on career advancement to the Respondent. The Respondent has had an unblemished career so far in the Department (except for this incident) and has been an active patrol officer with numerous arrests.<sup>8</sup> She testified in a clear and forthright fashion with no inconsistencies.

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<sup>8</sup> The Respondent testified that she had about 250 arrests; according to her CPI the number is 247, 113 of which are felonies.

This Court has also occasion to instruct juries on how to evaluate evidence. One of the standard instructions that judges give to juries is that it is not the quantity of evidence that counts but the quality, nor is it the number of witnesses who testify for one side or the other. It is the quality and believability of the evidence that should guide the fact finder.

Based on all of the above, this Court can see no reason to believe the Caballero/Castellanos version of events and finds the testimony of the Respondent credible.

This, of course, is just a subjective assessment of credibility. As will be seen further in this decision there are additional reasons to believe the Respondent's account of the events in question.

Item 2. The second quotation references page 7 line 6 of the transcript where the Respondent stated: "No, I did not (see Lazaro Castellanos at the scene).

The Respondent maintained her position on this during the trial. The only testimony in opposition was that of Caballero who said that when the Respondent approached the Sebring she was standing with Castellanos and that she, the Respondent and Castellanos formed a triangle while she had Castellanos explain the circumstances of the accident. There is also a hearsay statement from Castellanos which supports this version of events.

I have already addressed the issue of credibility regarding these individuals as compared to the Respondent but there is another factor to consider in assessing the truth of this assertion by Caballero.

This version of events does not make sense under the circumstances described by Caballero herself. The entire purpose of her journey from south Brooklyn to northern Manhattan was to extricate Castellanos from the situation. As has been noted, the evidence indicates that she arrived before the Respondent and her partner and had time, either in person or over the phone, while on route, to learn the simple facts regarding the accident and plan how to deal with the situation. Thus it would have made sense for her to have Castellanos move away from the area and have her deal with police officers when they arrived.

Put another way, there was no purpose in telling the responding officers that Castellanos was the driver when there was ample opportunity to substitute herself. Such conduct would be consistent with what the Respondent said occurred. There is no reason to believe the Respondent lied when she said she did not see (or more correctly notice) Castellanos.

Item 3. The third item in CX 1 reads as follows: "My partner went to the other party involved and she got her side of the story. And then she told me. I documented on the accident report my partner told me the party involved said, (as in original). Page 8 Lines 20-22.

Every account of the incident, except that of Packer, indicates that while the Respondent dealt with the occupant of the Sebring her partner, Gomez, went over to Packer who was some distance away. Packer identified the Respondent as the officer who approached her but expressed some uncertainty when she noted that appearances

change over time. It is clear that Gomez is the officer who approached Packer and not the Respondent.

The first issue here relates to what Gomez did. Gomez did not testify at this trial. Her two Official Department Interviews, dated September 21, 2005 and August 9, 2006 were received in evidence, (CX 3 & 4). Gomez also pled guilty to two specifications, similar to those in this case. Specification No. 2 in her case deals with the filing of a false instrument and Specification No. 1 deals with her making misleading statements at her Official Department Interview. Nothing in the record indicates exactly what she lied about at the interview however the testimony in this case makes clear what that misrepresentation was. At both of her interviews, Gomez said that she spoke to Packer. Packer testified that the officer who approached her did not speak to her and did not obtain her version of what occurred but merely took her paperwork, something that she was likely to remember well. Had Gomez spoken to Packer, she would have learned that the driver of the Sebring was a male not a female. It is clear that Gomez lied when she claimed to have interviewed Packer.

It is difficult to see how this Respondent could be held accountable for the failure of Gomez to properly interview the person she was tasked to interview, or how the Respondent could have known that Gomez, who in fact went over to Packer, had not conducted a simple interview with Packer while she was there. It is worth noting that even Caballero testified that while Gomez went over to Packer she did not know if Gomez actually interviewed her.

Item 4. In this item the Department claims that the Respondent gave a misleading or false statement when she said that she did not see the red Mitsubishi Eclipse at the scene.

There was absolutely no testimony or any other evidence that the Respondent took note of that vehicle or for that matter should have taken note of that vehicle. Even Caballaro did not claim that they discussed that car. Certainly, the car was there but there is simply no reason to believe that the Respondent knew of its connection to the events regarding the accident or took note of it. There is absolutely no evidence that the Respondent lied when she said that she did not see, or more correctly notice, the red Mitsubishi.

Item 5. This item states: "No, no I don't know why (I would write "he" on the accident report), page 10 line 5."

In its endeavor to claim that this is a misstatement or a lie the Department is essentially claiming to know the operation of the Respondent's mind. It is certainly possible that this was an act that revealed her knowledge that the driver of the Sebring was a male. On the other hand, it could have been just a mistake. No expert testimony was offered on this subject and it is not clear that any really could be. The use of the pronoun "he" is something to consider in connection with other evidence but it seems perilous to base an important finding of fact on it or to conclude that the Respondent lied when she said she did not know why she wrote "he" in the accident report.

Item 6. This item in CX 1 reads as follows: "She (Police Officer Gomez) told me that Lizzy Packer was waiting for a parking spot, double parked on the street and was struck

from behind by another vehicle. Yes, (the vehicle being driven by Jada Caballero). Page 11 Lines 19-22.”

Here again the Respondent is being charged for the conduct or misconduct of Gomez. Gomez testified at both her Official Department Interviews that this is what she told the Respondent. That she conveyed the uncomplicated facts of the accident is unremarkable except that we do not know how she got them because she did not speak to Packer.

It is certainly possible that she heard them from Caballero or O'Connor before going over toward Packer and a quick look at Packer's car would confirm that the Sebring hit Packer's car from behind, which is indeed what everyone said occurred.

Items 7 & 8 . The first of these items deals with a claim by the Respondent that she “never interacted with Lazaro Castellanos,” (Page 13, line 22) while the second refers to a statement by the Respondent that she never saw Castellanos in the company of Caballero (page 14 line 1).

This is what the Respondent said at trial as well. Again this is an issue of credibility between Caballero and Castellanos on one side and the Respondent on the other. This Court accepts the testimony of the Respondent as believable.

It is worth noting in this context that several civilian witnesses to the incident were interviewed. Reports of these interviews were received in evidence collectively as DX 4. Two of these witnesses, DeMary and Patterson, told the first investigative team that the female officers (Respondent and Gomez) never spoke to the male driver of the Sebring. In a second interview, both DeMary and Patterson qualified their original

statement on this issue as not being 100% certain. Another civilian witness, Mr. Miller was interviewed only once and he said that police never interviewed the male who was driving the Sebring, (this is the same Mr. Miller that the Department, in its closing argument, asks us to rely on regarding who arrived first at the scene).

While this is not the strongest evidence, it is what we have and it does provide some support for the Respondent's position that she never spoke with Castellanos. Conversely, these statements provide some indication that the Caballero and Castellanos' account is not true.

More striking on this issue is the testimony of Packer. Packer described Castellanos as someone she remembered because he was the driver of the car that hit her and that she had had an argument with him. It seems reasonable to believe that her attention would have been drawn to his actions. She never describes him as talking with a police officer and indeed indicated that he was on the sidewalk. This is the opposite side of the car from where Caballero said she had the three-way conversation involving him and the Respondent. Further, there is no testimony from Caballero or anyone that Caballero was on the sidewalk with Castellanos. Consequently, there is ample reason to believe that the Respondent was telling the truth when she said that she did not see Caballero with Castellanos and indeed that she did not see, or more correctly notice, Castellanos at the scene.

Item 9. This item deals with a claim by Caballero that the Respondent told her that she knew her from before and recognized her from a Domestic Violence Lecture she gave at Kingsborough College. The alleged incorrect statement the Respondent made at the

Official Department interview is: "The first time I saw (Caballero) was at the accident," (page 18, line 1).

It would be easy to deal with this as a simple credibility issue but the absence of proof regarding this matter is stunning. Caballero initially testified about multiple lectures at Kingsborough but when confronted with an earlier statement admitted that there was only one such lecture. She could not give a date, even an approximate date, as to when this one lecture occurred and at best provided a four year window during which it could have taken place. Her inconsistent and conflicting statements about the subject of the lecture would almost be amusing if the issue were not so serious.

No document was produced by the Department nor was any evidence provided to confirm that Caballero ever gave such lecture or lectures.

No documentary evidence was offered to establish that the Respondent as part of her police training attended a Domestic Violence lecture at Kingsborough, or anywhere else, nor was any documentary evidence provided that the Respondent as a student before she entered the police academy attended such a lecture at Kingsborough.

There was also testimony from Lassen that the investigators tried to find some evidence to support this claim and they were unsuccessful in that effort.

Interestingly enough, in Castellanos' version of events he believed that the Respondent knew Caballero because she gave a lecture at the police academy while the Respondent was there. Castellanos made no mention of Kingsborough. The statement may be an error by Castellanos, on the other hand it may be some indication that Caballero may have said something different at the outset of the incident and changed her story later because a lecture to recruits at the academy ought to be relatively easy to



document. Further Castellanos and Caballero stopped communicating several months after the incident so if Caballero's story changed he would not have known about it.

The Respondent denied knowing Caballero prior to the incident and denied ever attending a lecture at Kingsborough College. This Court can see no reason to believe Caballero's testimony over that of the Respondent's on this issue.

Item 10. This item opens a whole new issue in this trial. The Department claims that the Respondent lied when she said that Sergeant Raymond O'Connor was at the scene of the accident, (page 22, line 11).

O'Connor retired from this Department and subsequently died. Before he retired O'Connor was the subject of an Official Department Interview on August 16, 2006. The transcript of that interview is part of the evidence in this trial (RX C). O'Connor testified that he was at the scene of the accident. He met the two drivers who were both female and that one of them was a member of the service. He stated that he gave the responsibility to write up the accident report to the Respondent and her partner and left the scene.

In testimony before this Court, Lassen asserted that he believed O'Connor lied to protect the Respondent. No motive was given as to why a sergeant about to retire would risk his pension and jeopardize his retirement plans by lying to protect someone else. The only evidence cited to support this contention was the fact that the two officers with Sergeant O'Connor that day did not remember the event.

That two officers riding in an RMP might not recall a routine stop in which they did not participate many months later should surprise no one.<sup>9</sup> It is a very thin reed indeed upon which to rest serious charges against a retired and now deceased officer.

What is even more disturbing is that there is independent evidence that the O'Connor was telling the truth about being at the scene of this accident and because of a careless error, the Department did not have that evidence in their possession.

Lassen testified that there was no Sprint report for the incident. He testified that he inherited the investigation and that he reviewed the file and that his predecessor investigators and he had requested the Sprint report with negative results. It was only during cross-examination in the course of this trial that he learned that the requests for information about the 311 call the 911 tape and the Sprint report contained the wrong date.<sup>10</sup>

The Respondent produced a Sprint report for the incident (RX D) and the Department, to insure the validity of that Sprint report, provided its own copy (DX 5) the next day.

Both exhibits indicate that two Department vehicles responded to the incident. One was the Respondent's sector car, 33D and the other was a vehicle designated as 33S.

The Department called Rodriquez, who works in the communication division of this Department, as an expert witness. He testified that 33S is not proper designation for a sergeant but that it could be used. The only other thing that he said 33S might indicate

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<sup>9</sup> It is not clear exactly when these officers were first interviewed but it appears that the issue of O'Connor's presence at the scene occurred during the Respondent's second Official Department Interview on August 9, 2006. Thus these two officers were first questioned about this event more than a year and a half after it occurred.

<sup>10</sup> In addition it appears that only one request was made for these reports by Morrissey and despite testimony by Lassen that he too had requested the report and indeed had been instructed to re-send for the report, he did not do so instead he merely re-used the original, erroneous, negative report.

would be a scooter and there is absolutely no testimony that there was a scooter present at the incident on March 16, 2005. Consequently, the notation "33S" likely indicates that the sergeant was there.<sup>11</sup>

There is therefore documentary evidence, apparently not known by the Department until the middle of this trial, which provides independent corroboration of the statement by O'Connor that he was at the scene of this incident.

To be sure, O'Connor's description of both drivers as being dark skinned Hispanic is incorrect. Packer appears to be a non-Hispanic African American and Caballero might appear to be Hispanic but is not dark skinned. But I do not find that inconsistency to be sufficient to discredit the statement made by a soon to be retired sergeant at an Official Department Interview. Indeed, given that there is independent evidence that he was at the scene, the error seems minor particularly in light of the time period between the incident and his interview.

Consequently, O'Connor's statement confirms that Caballero held herself out as the driver of the Sebring. O'Connor also indicated that he did not see Castellanos at the scene. All of this confirms what the Respondent said about the incident.

Based on O'Connor's statement and the Sprint report, there is every reason to believe that the Respondent was telling the truth at her Official Department Interview when she said that O'Connor was on the scene.

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<sup>11</sup> Testimony by Lassen that 33S could not possibly stand for the sergeant is rejected as being superseded by that of Rodriguez who was qualified by the Department as an expert.

## II. Reconstruction of Events.

Certainly, one of the most unbiased versions of events is that of Lizzie Packer. Her tenacity at the time of the incident to insist on a police response and her determination to wait over an hour for a sector car to take her report is impressive. Her determination to follow up on the incorrect accident report led to the Department learning of the very serious misconduct by Caballero.

This is not to say that her testimony is infallible because she clearly erred in identifying the Respondent as the officer who had approached her. The real limitations to her testimony seem to be based mostly on what she did not clearly observe or recognize as relevant at the time of the incident or what she admits to being uncertain about. There is also some question about the effect of the many retellings of the story she has been through. But starting with her testimony we can re-evaluate the full scope of this evidence in this case.

Packer testified that her car was struck by the Sebring and determined to have a police response so she called 311. Later when there was no police response, she called 911.

While she was waiting, she flagged down a regular police car and was told "someone will be along later to help you." Later, a police sports utility vehicle (SUV) came by. She flagged them down and they also said someone would be by to help. She indicated that there were three occupants in the SUV. After that, the Respondent and her partner arrived.

In O'Connor's statement, he described the vehicle he was in only as an "RMP" while the Respondent said he was in an NYPD van. Packer insisted that the vehicle with

the three officers was not a van but an SUV. Whatever specific vehicle or radio motor patrol O'Connor was in, it is certainly reasonable to conclude that the police vehicle with three people in it, described by Packer, refers to O'Connor and the two officers who were with him.

O'Connor did not recall if he got the job from Central or as a pick-up but said he called for a sector car to write up the accident. The Respondent testified that O'Connor went over the air and called for a sector car. Even though her sector was at the opposite end of the precinct, she responded. Rodriguez, in looking at the Sprint report described the job as a pick-up.

If the Respondent was on a job at the other end of the precinct then the Respondent could not have been the one to have picked up the job. But if O'Connor was the officer that drove by, as described by Packer, then the job was actually a "pick up" by O'Connor.

Rodriguez said the Sprint indicated that it was a pick-up by the Respondent's sector car, "33 David", which is listed first on the Sprint.

It certainly possible, that the Respondent's vehicle, "33 David", is listed first on the Sprint because she was the first car to actually call into Central on the job. That this could occur is supported by Rodriguez' testimony because he indicated that sergeants regularly sent for back up without going through the formal procedure and calling the communication division or as he put it "Central."

During his testimony, Rodriguez indicated that he could not understand why Packer called 311 after the job had been picked-up because she should have seen the unit on the scene. This actually is another confirmation of the Respondent and O'Connor's

version of events. Packer testified that she was frustrated because the three officers in the SUV, the second police car she saw, didn't help her. That would have triggered her telephone call along with her complaint that she had been waiting over an hour. In the meantime, unbeknown to Packer, O'Connor had called for assistance and the job was called into Central before her call reached the communication division.

Moreover, there would be no reason for the Respondent who was assigned to sector D to be in sector A, at the opposite end of the precinct, to take a pick-up job. A reasonable conclusion is that they were called to sector A. These factors tend to indicate that the Sprint report supports what both the Respondent and O'Connor said about the incident.

Of course, all of this could have been confirmed from the tape recordings of the various transmissions had the Department requested the 911 tapes for the correct date in a timely fashion which we now know was not done because of an error on the part of the investigators.

As noted, Packer described an officer, which we know to have been Gomez, and indicated that Gomez took her paperwork without getting her side of the story and then returned and merely dropped off a paper with the report number. The interaction with Gomez or lack thereof is something that Packer clearly remembered because it directly impacted on her, just as she recalled, accurately, that the driver of the Sebring was a male.

Other events, such as what type of vehicle O'Connor was in or when the Mitsubishi arrived, might have been less part of her focus and therefore her testimony is less reliable.

Certainly, some of the police conduct was part of her area of attention. Packer testified that while waiting for the police, Castellanos was rude and implied that he would receive some kind of special treatment because the Sebring was owned by a police officer. This would likely have heightened Packer's suspicion of police conduct.<sup>12</sup> In his statement, Castellanos described a scene in which Caballero and the Respondent were hugging on the street in plain view.

While not the strongest evidence, the fact that neither Packer or any of the other civilian witnesses made a comment about a uniform police officer hugging a female (Caballero) in the street while preparing the accident report is worthy of note. If such a thing had actually occurred, it would likely have drawn both attention and comment.

The absence of any such comment is consistent with the Respondent's version of events. The Respondent said that she never hugged Caballero and that such conduct would be inappropriate and unprofessional.

Further, there is Packer's testimony indicating that the male driver, Castellanos, was on the sidewalk and not in the street as Caballero described him when they allegedly had the three-way conversation. This of course supports the Respondent's version in which she said she did not notice Castellanos at the scene.

Looking at this evidence, as a whole, it is consistent with the version of events put forth by the Respondent and inconsistent with the version put forth by Caballero.

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<sup>12</sup> Packer's mistrust of the police is clear. She described the reaction of officers in an RMP that stopped but did not take her report as acting as though she were trying to make something up.

III. Failure to mention O'Connor at the first Official Department Interview.

As noted above, the failure to mention something is not the strongest kind of evidence but it is potentially some measure of the reliability of a witness' account of events.

In his cross-examination of the Respondent and in his closing argument, the Assistant Department Advocate made much of the fact that the Respondent did not mention the fact that Sergeant O'Connor was on the scene in her first Department Interview on September 21, 2005.

The transcript of the interview was placed in evidence (CX 2) at the Court's request. The Court reviewed that transcript and, as the Respondent testified, nothing occurred during that interview which would have led her to mention or even see the need to mention O'Connor.

Indeed in its review of that transcript, the Court looked to see if anyone asked her how she "caught" that job or requested any other narrative from her that would have led to a discussion of O'Connor's involvement. No such questioning occurred.

With regard to both her interview with the assistant district attorney and her first Official Department Interview the Respondent said she assumed that her questioners knew that O'Connor was at the scene. This is not an unreasonable assumption because had the investigators put the correct date on their request for the Sprint report, they would have had that information.

After reviewing the Respondent's first Official Department Interview, this Court finds it unsurprising that O'Connor's name did not come up. Further, the Court finds that her explanation as to why O'Connor's name did not come up in an interview with the



assistant district attorney, who was preparing a grand jury presentation focused on getting an indictment against Caballero, is both reasonable and persuasive.

As the Court has previously noted, there is ample evidence to indicate that O'Connor was on the scene, but because so much effort was spent on the issue of the Respondent's alleged failure to mention him, it bears comment in this decision.

#### IV. – Statements of Gomez

Gomez was not called as a witness by either side in this trial. Transcripts of her two Official Department Interviews were entered into evidence by the Court (CX 3 & 4). As previously noted, the Court finds that the officer who approached Packer was Gomez. Additionally, as previously noted the Court accepts as true Packer's complaint that the officer who approached her, merely took her paperwork and did not get her side of the story as this was an issue she was focused on and her recollection of that seems reliable. Additionally, as previously noted at both of her interviews, Gomez claimed to have interviewed Packer. This misrepresentation certainly explains and justifies Gomez's plea to the charges and specifications against her, which occurred on April 30, 2008.

The remainder of Gomez' version of the events surrounding the accident matches that of the Respondent. Gomez indicated that O'Connor was present when they arrived at the scene and she did not see Caballero at the scene. She did not report any discussion between Caballero and the Respondent regarding training or Kingsborough College. There is simply no reason not to credit these aspects of her testimony.<sup>13</sup>

While it may be argued that the Respondent and Gomez were regular partners and could have constructed their story together, the fact is that they were each interviewed

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<sup>13</sup> A review of Gomez' plea minutes do not contradict this conclusion.

separately, multiple times. Usually this is sufficient to establish inconsistencies in fabricated stories. There are no such inconsistencies between the version of events put forward by the Respondent or Gomez. This is in contrast to the versions of events presented by Caballero and Castellanos where there are significant inconsistencies.

V. – Caballero's testimony

One aspect of Caballero's testimony bears mention as it impacts on the Respondent's knowledge of who the actual driver of the Sebring was.

Caballero testified at trial that there was a three-way conversation where she had Castellanos tell the Respondent about the accident after which she accompanied the Respondent back to the RMP. According to Caballero's trial testimony, the accident was never discussed further and that she never actually asked the Respondent to falsely list her as the driver. Her testimony was that they essentially had a friendly conversation about her career in the NYPD. The only further overt thing that Caballero said she did was to hand her license to the Respondent along with the Sebring paperwork.

If that in fact was the conduct then the Department's case assumes that the Respondent falsely completed the accident report without a request or an explanation from Caballero as to why she needed this to be done, which seems illogical or at least unlikely.

If one were to take Caballero's trial testimony at face value, there is no evidence that the Respondent knew that Caballero had not been the driver of the Sebring at the time of the accident. Caballero described the conversation in which Castellanos told the

Respondent about the accident as brief. Further, on her direct examination she was asked the following questions and gave the following answers:

Q. What, if any, objects did you give to Officer Sberna?

A. My registration, insurance card, and my driver's license.

Q. By doing this, what were you communicating to her?

A. That I was the driver.

Thus by her own testimony, in what may have been a moment of candor, Caballero indicated that she indeed conveyed to the Respondent that she, Caballero, had been the driver of the Sebring. Other than Caballero's assumption that the Respondent knew that Castellanos was the driver, there is no evidence that the Respondent in fact knew and understood that to be the case. For instance, there is no claim by Caballero that the Respondent acknowledged verbally or otherwise that she knew that Castellanos was driver nor was there any claimed statement by the Respondent that she knew that she was doing some kind of favor for Caballero. Thus even if one were to rely on Caballero's testimony, the Department never established that the Respondent intentionally falsely filed the accident report. Certainly, there is no evidence that she "acted in concert" with Caballero to do so as alleged in the specification.

#### VI. – Motive

To be clear, this Court does not accept Caballero's testimony and finds that Caballero simply invented many of the claims she made regarding her contact with this Respondent.

It is difficult to determine why someone would do that. It is possible that Caballero, who had a misdemeanor conviction, was concerned that she would lose even her vested pension. It should be noted that she entered a plea on her disciplinary case which would allow her to vest if she cooperated with the Department by testifying in this case. Of course, no one in the Department wanted her to lie but without evidence against this Respondent, she might have felt she had less of a chance at keeping her vested rights.

Moreover, admitting that she had misrepresented herself as the driver would have placed the sole responsibility for the false report on her thereby increasing her level of culpability.

In sum, Caballero had a motive to falsely implicate and involve the Respondent in her misconduct.

Further, her testimony about the plea agreement casts yet more doubt on her credibility. When asked if she had, as part of that plea deal, agreed to testify against this Respondent she initially denied it. Only after reviewing the plea minutes and being questioned by the Court did she acknowledge that testifying at this trial was part of the agreement.

Not only was there an agreement that she was to testify at this trial but it was also agreed that her own disciplinary case would not be processed until after she had completed that obligation. Thus, more than a year has passed without her being required to vest out as provided in the plea agreement.

It is difficult to understand how Caballero could not remember a part of the plea agreement that not only brought her to this trial as a witness but that kept her on the job for so long after her agreement to vest out.<sup>14</sup>

Counsel for the Respondent argued that Caballero received some form of special treatment and indeed she was not charged with criminal association, failing to take police action or other misconduct related to her knowingly allowing an unlicensed driver to operate her vehicle. Caballero faced only specification related to her criminal conduct in offering a false instrument for filing.

#### VII. – Active officer

This raises another interesting point about the behavior of individuals. If the Respondent knew that Caballero wanted her to falsely complete the accident report then she might have wanted to know why Caballero needed this favor. It seems unlikely that an active officer would not at least want to know what was going on with the real operator of the vehicle and any check of Castellanos would have disclosed his open warrant. It seems unlikely to this Court that an active officer like the Respondent would have failed to make some kind of inquiry about the person she was being asked to protect. Perhaps this is not the strongest point but it is yet another reason not to believe Caballero's account of events.

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<sup>14</sup> In addition to trial testimony on this issue, Court is taking judicial notice of the transcript of the Caballero's pleas, which is an official Department record, (see RCNY 15.04 f).

VIII. – Castellanos

In its closing statement, the Department has argued that testimony about Castellanos' statement was not offered for the truth of the matter asserted but for the fact that the statement was made. The Assistant Department Advocate asserts that: "The Department offered it simply to prove that Mr. Castellanos spoke to Officer Sberna," and that this was not hearsay.

Castellanos did not testify at this trial and the testimony we have about what he said comes from Streffacio who testified that Castellanos told him that he spoke to one or both of the officers at the scene. This is very much hearsay and entitled to no greater weight as suggested by the Assistant Department Advocate.

To be clear, this Court rejects Castellanos' statement not merely because he did not come to this forum to testify, thereby initiating the need for hearsay, but because he is unworthy of belief. Castellanos' credibility is questionable for reasons based on his own conduct in flouting the law. He did this by driving without a license, by threatening to abuse police authority in his discussions with Packer and with his failing to respond to an outstanding warrant for a period of time both before and well after this incident. Moreover, his disregard for the law and for truth is demonstrated by the fact that he not only participated in the false filing of an accident report but that he set in motion the whole unfortunate chain of events by calling Caballero for the express purpose of seeking some extra-legal way out of his problem. Whatever weight one might give to his statement because, as the Department suggests, he made them against his penal interest, is outweighed by his overall unreliability.

IX. – Cell Tower Records I

DX 3 is worksheet 72 of the IAB investigative file. Appended to the worksheet are records of the cellular telephones used by Caballero and Castellanos during the time of the incident on March 16, 2005. Included are the location of cell phone towers used by these telephones. Lassen used these records to conclude that Caballero arrived at the scene at 5:30 P.M. which the same time the Sprint records record the Respondent as arriving at the scene. As noted earlier, it appears that the Respondent and Caballero arrived at the scene very close in terms of time but the records provide no clear evidence as to who arrived first and any determination of that must come from the testimony. However, looking at the cell phone records it is possible that Lassen's testimony about when the Respondent arrived may be misleading.

No effort was made to qualify Lassen as an expert in cell phone records or as an expert in how cell phone towers relate to the location of a cellular telephone. No expert was called by the Department to analyze these records.

It does appear from the records that Caballero was in the southern part of Brooklyn at 4:13 P.M., the time of the first call she received from Castellanos. Later cell sites seem to track her movement along the Brooklyn-Queens Expressway through Sunset Park and Red Hook into lower Manhattan and through midtown Manhattan on the east side (the cell cite for a call she made to voicemail encountered a tower on Roosevelt Island at 4:57 P.M.). These calls all indicate that, as she testified, Caballero in response to Castellanos' call about the accident drove from Brooklyn to the accident scene. The calls also indicate that Castellanos and Caballero were in regular contact over this period of time. With respect to a call between them at 5:26 P.M., Lassen's testimony seems to

assume that Caballero was still on route when the call began and concluded that she arrived at the scene at the end of the call, which would have been about 5:30 given that it was a call of almost 4 minutes.

However, given the proximity of the cell site for that call, "Macombs Street and 152 St. Manhattan," to the scene, something noted by Lassen, it is also possible that the call was made after Caballero arrived and that they were speaking by cell phone because Castellanos was standing away from her, (the call originated and ended at the Macombs Street tower which might indicate that she was stationary). Without expert testimony that a call made from the scene could not hit that cell tower, something that may be impossible to establish, the cell tower evidence is inconclusive on the issue of when Caballero arrived.<sup>15</sup>

This is not to say that the cell phone and cell tower records support the Respondent's version of events. It is simply to say that the state of the record before this Court is insufficient to draw the conclusion that Caballero was on route when she made the call and ceased when she arrived, which is what Lassen's testimony appears to imply.

#### X. – Cell Tower Records II

At one point in her testimony, Caballero said she left work and was heading to Manhattan when she got the call from Castellanos about the accident. She testified that her tour ended at either 1500 hours or 1523, she was not sure. Either of those times would have put her on the road at a point in time earlier than that shown on the cell phone

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<sup>15</sup> In Disciplinary Case No. 80401/04, approved July 9, 2007, the Department indicated that phone calls might have been picked up by a cell tower as much as two and a half miles from the location of the cellular telephone involved in those calls.



tower record, which list her as hitting the Sunset Park tower at 4:40 P.M. (1640) and the Red Hook near the entrance to the Brooklyn Battery Tunnel at 4:43 P.M. (1643).

This ties in with an inconsistency in her various statements about how long her trip took. At trial she testified it took her about 45 minutes to an hour, while on cross-examination she conceded that she earlier had stated that it only took her about 20 to 25 minutes. Indeed in her Official Department Interview of June 14, 2006, she stated that she was on the FDR at about 159<sup>th</sup> Street when she first got the call about the accident, (see CX 5 p. 7-8).

There does not seem to be a motive for Caballero to have lied about these issues but the obvious problems with her recounting of significant events related to the incident that is the subject of this inquiry raise further questions about the accuracy and reliability of her testimony.

#### XI. – O'Connor

In its closing argument, the Department makes the point that if the Respondent's version of events is accurate, O'Connor would have arrived at the scene ten to fifteen minutes before her. This is correct. The Department questions what O'Connor would have done for that period of time and it questions why he did not write the report in that period of time himself. O'Connor described a crowd but there is no other testimony about a crowd.

None of these questions are answered in the Official Department Interview of O'Connor and some are not explored. The Respondent described O'Connor as being

further down the block when she arrived and we do not know anything more about what he was doing.

It seems likely that Caballero arrived on the scene after O'Connor but we don't know if he saw her arrive or when he spoke to her in relation to his arriving on the scene. Because he is now deceased, we will never know what he knew or did not know. Further, this Court does not see any reason to believe that some misdeed lies at the heart of these unanswered questions. O'Connor was first questioned about the incident approximately 18 months later and his memory was hazy. Additionally, he indicated that he suffered a line of duty injury later that tour. But even if O'Connor knew that Caballero was substituting herself for Castellanos that does not mean that the Respondent had that knowledge.

#### XII. -- Who arrived first - redux

One further item might be considered on the significant issue of who arrived first at the scene, Caballero or the Respondent. It seems clear that two potential parking spaces were available on 157 Street in the vicinity of the accident at that time. One was a spot just down the block from where the Sebring was double parked. That spot was on the opposite side of the street just beyond a driveway. It was a regular parking spot, parallel to the curb, where a car could just pull in because of the open space in front of it created by the driveway.

It would seem that the first car to arrive would take that spot and indeed that is where Caballero parked her red Mitsubishi. The Respondent's RMP was parked across

the sidewalk in the driveway. If the Respondent had arrived first, it would seem that she would have parked the RMP in the spot along the curb.

While this is not the strongest evidence, it does give some measure of support for the notion that Caballero was on the scene first.

### Conclusion


As noted at the outset of this discussion, there is no definitive, independent evidence on the central issue in this case; the Respondent's knowledge about who was the driver of the Sebring at the time she completed the accident report. In the end, it comes down to a determination of who is telling the truth. When one considers all of the evidence and surrounding circumstances, it seems far more likely that the Respondent is telling the truth and that the Caballero/Castellanos version of events is unworthy of belief.

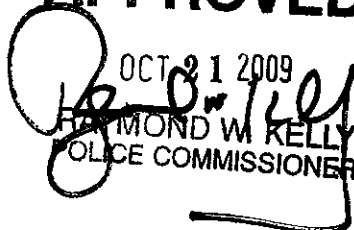
Put another way, the Department has failed to establish by a preponderance of the evidence that the Respondent made any "misleading" statements at her Official Department Interview or in any way tried to prevent the Department from coming to a conclusion as to what transpired, as alleged in Specification No. 1. Indeed, the most serious impediment to finding out what occurred was the failure by the investigators to obtain the Sprint report and Departmental audio recordings related to the incident.

Further, the Department has failed to establish that the Respondent, "while acting in concert with another individual, identity known to the Department, listed Jada Caballero as the driver on an accident report form, knowing that to be false," as alleged in Specification No. 2.

Consequently the Respondent should be found Not Guilty of the charges against her in both of the specifications before this Court.

Respectfully Submitted,

  
Martin G. Karopkin  
Deputy Commissioner-Trials

**APPROVED**  
OCT 21 2009  
  
RAYMOND W. KELLY  
POLICE COMMISSIONER